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NATURAL RESOURCES AND ECONOMIC DEVELOPMENT

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SUBTITLE 4. WILDLIFE RESOURCES

CHAPTER 41

ADMINISTRATION AND ENFORCEMENT OF WILDLIFE REGULATIONS

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SUBCHAPTER 1 — ARKANSAS STATE GAME AND FISH COMMISSION

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SECTION.

15-41-120. Legislative findings and intent — Reports.

Effective Dates. Acts 2010, No. 162, § 9: July 1, 2010. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2010 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2010 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2010."

Acts 2013, No. 1027, § 13: July 1, 2013. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2013 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2013 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2013."

15-41-115. Rewards.

The Arkansas State Game and Fish Commission is authorized to promulgate rules and regulations for the eligibility, amounts, and payment of rewards to individuals providing information leading to the arrest of violators of commission regulations.

History. Acts 1995, No. 231, § 6.

A.C.R.C. Notes. Acts 2013, No. 1027, § 7, provided: "PAYMENT OF REWARDS. Payment of rewards shall be from the Game Protection Fund from the Commission's Maintenance and General

Operation appropriation as herein appropriated in Section 3, Item No. (05)(A).

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

15-41-118. Agreements to hold and save United States free from damages.

(a)(1) Except as provided in subdivision (a)(2) of this section, the Arkansas State Game and Fish Commission is authorized to agree to hold and save the United States free from damages due to the design, construction, operation, maintenance, repair, replacement, or rehabilitation of:

(A) Projects for water resource development, wildlife conservation, or other purposes; and

(B) Any state-sponsored or locally sponsored project-related betterments.

(2) Subdivision (a)(1) of this section shall not apply to damages due to the fault or negligence of the United States or its contractors.

(b) Subsection (a) of this section does not:

(1) Obligate the General Assembly to provide future appropriations; or

(2) Abrogate the provisions of Arkansas Constitution, Article 5, § 29.

History. Acts 2010, No. 162, § 7.

15-41-119. Representative authority for governmental cooperation for wildlife purposes.

(a) The Arkansas State Game and Fish Commission may represent the state in matters pertaining to cooperation with other states and the federal government for wildlife conservation, management, and regulation purposes and may enter into compacts, including without limitation the Interstate Wildlife Violator Compact, with other states to provide for reciprocal enforcement of hunting, fishing, trapping, and other wildlife laws of member states.

(b)(1) The Director of the Arkansas State Game and Fish Commission shall file an annual report with the Legislative Council itemizing and summarizing all compacts entered into under this section.

(2) The annual report shall list with respect to each compact:

(A) A brief statement of the purposes of the compact;

(B) The amount of funds to be expended under the compact; and

(C) Any additional information that enables the members of the Legislative Council to determine the nature and purposes of the compact.

History. Acts 2013, No. 1349, § 1.

15-41-120. Legislative findings and intent — Reports.

(a) The General Assembly finds that:

(1) The natural resources of Arkansas should be protected and restored as needed; and

(2) When the Arkansas State Game and Fish Commission receives damages from a lawsuit as the result of damage sustained by property

of the commission, the commission's primary use of the funds received as damages should be to benefit the property that was the subject of the litigation.

(b) It is the intent of the General Assembly that when the commission receives damages from a lawsuit as the result of damage sustained by property of the commission, the commission should use the funds received as damages to benefit the property that was the subject of the litigation.

(c) The commission shall report to the Game and Fish/State Police Subcommittee of the Legislative Council annually, at the request of the chair of the Game and Fish/State Police Subcommittee of the Legislative Council, or at the request of the cochairs of Legislative Council the following information with respect to any lawsuit in which the commission is a plaintiff or seeks damages from a third party:

- (1) The status of the lawsuit;
- (2) The issues present in the lawsuit;
- (3) The relief requested in the lawsuit; and
- (4) The commission's plans for using any funds received as damages from the lawsuit.

History. Acts 2013, No. 1027, § 11.

SUBCHAPTER 2 — ENFORCEMENT GENERALLY

SECTION.

15-41-210. Electronic proof of hunter education certificate.

15-41-210. Electronic proof of hunter education certificate.

(a) As used in this section, "acceptable electronic format" means an electronic image produced on the person's own cellular phone or other type of portable electronic device that displays all of the information on the hunter education certificate as clearly as the paper hunter education certificate.

(b) When a law or regulation of this state requires a person to carry and display upon request a hunter education certificate, an electronic copy of the hunter education certificate in an acceptable electronic format is sufficient to establish compliance.

(c) The presentment of proof of a hunter education certificate in an acceptable electronic format does not:

- (1) Authorize a search of any other content of an electronic device without a search warrant or probable cause; or
- (2) Expand or restrict the authority of a law enforcement officer to conduct a search or investigation.

History. Acts 2013, No. 472, § 1.

Publisher's Notes. Former § 15-41-210, concerning the penalty for violations

not specifically named in a 1917 law, was repealed by Acts 1999, No. 1557, § 15. The section was derived from the follow-

ing sources: Acts 1917, No. 133, § 14; C. & M. Dig., § 4806; Pope's Dig., § 5907; A.S.A. 1947, § 47-521.

CHAPTER 42

LICENSES

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

15-42-104. Hunting and fishing licenses for residents — Special fees.

15-42-127. Implied consent.

SECTION.

15-42-128. Lifetime hunting licenses and fishing licenses for resident disabled veterans.

15-42-104. Hunting and fishing licenses for residents — Special fees.

(a)(1) The maximum fee for the annual resident basic hunting license for any resident of the State of Arkansas who is sixteen (16) years of age or older for the privilege of taking small game and the taking of one (1) deer by the use of a modern center-fire firearm shall be as provided by the regulations and within the bag limits promulgated by the Arkansas State Game and Fish Commission but shall not exceed eleven dollars and fifty cents (\$11.50) each until July 1, 1997, when the maximum fee shall revert to ten dollars and fifty cents (\$10.50).

(2) The maximum fee for the annual resident sportsman hunting license for any resident of the State of Arkansas who is sixteen (16) years of age or older for the privilege of taking three (3) deer and all other game by any method of taking shall be as provided by the regulations and within the bag limits promulgated by the commission but shall not exceed twenty-six dollars (\$26.00) each until July 1, 1997, when the maximum fee shall revert to twenty-five dollars (\$25.00) each.

(3) In addition to the annual resident basic and sportsman hunting license fees authorized in this subsection, the commission by regulation may provide that any resident of this state who is sixteen (16) years of age or older be required:

(A) For the privilege of hunting migratory birds in this state, to obtain a special permit and pay a special annual fee not to exceed seven dollars (\$7.00) each;

(B) For the privilege of taking a bonus deer in addition to the deer authorized with the basic hunting license and the sportsman hunting license, to obtain a special permit and pay a special fee not to exceed ten dollars (\$10.00) each; and

(C) For the privilege of hunting elk in this state, to obtain a special permit and pay a special annual fee not to exceed thirty-five dollars (\$35.00) each.

(4) Nothing contained herein is intended to restrict the authority of the commission to charge any resident of the state an additional fee solely for the purpose of entering upon and hunting upon any land owned or leased by the commission.

(b)(1) The maximum fee for the annual resident fishing license for any resident of the State of Arkansas who is sixteen (16) years of age or older shall be as provided by the regulations promulgated by the commission but shall not exceed eleven dollars and fifty cents (\$11.50) each until July 1, 1997, when the maximum fee shall revert to ten dollars and fifty cents (\$10.50) each.

(2) In addition to the annual resident fishing license fee authorized in this subsection, the commission by regulation may provide that any resident of this state sixteen (16) years of age or older be required for the privilege of fishing for trout in this state to obtain a special permit and pay a special annual fee not to exceed five dollars (\$5.00).

(3) In lieu of the annual resident fishing license fee authorized in this subsection, the commission by regulation may provide that any resident of this state sixteen (16) years of age or older be authorized to purchase a three-day-trip fishing license for a fee not to exceed seven dollars and fifty cents (\$7.50) each until July 1, 1997, when the maximum fee shall revert to six dollars and fifty cents (\$6.50) each.

(c) The maximum fee for the annual resident combination sportsman hunting and fishing license for any resident of the State of Arkansas who is sixteen (16) years of age or older for all hunting and fishing privileges except those covered by the migratory bird and trout permits shall be as provided by the regulations and within the bag limits as promulgated by the commission but shall not exceed thirty-seven dollars and fifty cents (\$37.50) each until July 1, 1997, when the maximum fee shall revert to thirty-five dollars and fifty cents (\$35.50).

(d)(1) The commission:

(A) Shall provide for the issuance of a lifetime hunting and fishing license, with an optional lifetime trout stamp and lifetime state duck stamp, to a resident of this state who is:

(i) Sixty-five (65) years of age or older for a one-time fee of thirty-five dollars and fifty cents (\$35.50);

(ii) [Repealed.]

(iii) Any age for a one-time fee of one thousand dollars (\$1,000); or

(iv) Sixty (60) years of age or older who is a regular or nonregular retiree of the armed services of the United States for a one-time fee of thirty-five dollars and fifty cents (\$35.50); and

(B) May provide for the issuance of a lifetime hunting-only license or a lifetime fishing-only license for a fee that shall not exceed the fee that the resident would be charged otherwise for the issuance of a lifetime license under subdivision (d)(1)(A) of this section.

(2) The commission shall offer a resident issued a lifetime hunting and fishing license under subdivision (d)(1)(A) of this section, a hunting-only license or a fishing-only license under subdivision (d)(1)(B) of this section, or a hunting license or a fishing license issued under § 15-42-128:

(A) A lifetime trout stamp for a one-time fee of five dollars (\$5.00);

(B) A lifetime state duck stamp for a one-time fee of seven dollars (\$7.00); or

(C) Both a lifetime trout stamp and a lifetime state duck stamp for a one-time fee of twelve dollars (\$12.00).

(3) The commission:

(A) Shall provide for the issuance of a three-year disabled hunting and fishing license to a resident of this state who is totally disabled for a fee of thirty-five dollars and fifty cents (\$35.50); and

(B) May provide for the issuance of a hunting-only license or a fishing-only license to a resident of this state who is totally disabled for a fee that shall not exceed thirty-five dollars and fifty cents (\$35.50).

(e) For this section, the commission may promulgate rules that:

(1) Define “resident” and “totally disabled”; and

(2) Govern the sale and use of each license, permit, or stamp issued under this section.

History. Acts 1987, No. 910, §§ 1-4; 1987, No. 939, § 18; 1987 (1st Ex. Sess.), No. 1, §§ 2, 3; 1989, No. 49, § 1; 1989, No. 219, § 1; 1995, No. 369, § 1; 1999, No. 987, § 1; 2003, No. 428, § 1; 2009, No. 623, § 1; 2011, No. 302, § 1; Acts 2013, No. 1253, §§ 1-3.

Amendments. The 2011 amendment added (d)(1)(A)(iv).

The 2013 amendment repealed (d)(1)(A)(ii); added “or a hunting license or a fishing license issued under § 15-42-128” at the end of (d)(2); deleted “military veteran” following “Define” in (e)(1); and made grammatical changes.

15-42-107. Nonresident fishing license generally.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Prohibiting, Lim-

iting, or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

15-42-108. Nonresident three-day fishing license.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Prohibiting, Lim-

iting, or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

15-42-122. Limitation on issuance of hunting or fishing licenses in neighboring states.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Prohibiting, Lim-

iting, or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

15-42-126. Reciprocity agreements — Nonresidents over 65.**RESEARCH REFERENCES**

ALR. Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

15-42-127. Implied consent.

(a)(1) Subject to the provisions of subsection (c) of this section, any person who purchases a hunting license for use in the State of Arkansas or engages in hunting privileges in this state shall be deemed to have given consent to a chemical test or tests of his or her blood, breath, saliva, or urine for the purpose of determining the alcohol concentration or controlled substance content of his or her blood, breath, saliva, or urine if the person is involved in a shooting accident while hunting.

(2) Any person who is dead, unconscious, or otherwise in a condition rendering the person incapable of refusal to submit to a chemical test of his or her blood, breath, saliva, or urine shall be deemed not to have withdrawn the consent provided by subdivision (a)(1) of this section, and the chemical test may be administered subject to the provisions of subsection (c) of this section.

(3)(A) When a person who is hunting in this state is involved in a shooting accident resulting in loss of human life or serious bodily injury, a law enforcement officer shall request and the person or persons shall submit to a chemical test or tests of the person's blood, breath, saliva, or urine for the purpose of determining the alcohol concentration or controlled substance content of his or her blood, breath, saliva, or urine.

(B) The law enforcement officer shall cause the chemical test or tests to be administered to the person or persons involved in the shooting accident, including the person injured by the shooting and the person who caused the injury by shooting another person.

(b) If a person who is hunting is involved in a shooting accident resulting in loss of human life or serious bodily injury and the person refuses to submit to a chemical test under this section upon the request of the law enforcement officer, the person shall be guilty of a violation for refusal to submit, and upon conviction:

(1) The court shall levy a fine of not less than two thousand five hundred dollars (\$2,500) and not greater than five thousand dollars (\$5,000); and

(2) The Arkansas State Game and Fish Commission may suspend or revoke the person's hunting privileges or eligibility to purchase a hunting license for life.

(c)(1) The chemical tests required under this section shall be administered at the direction of a law enforcement officer having reasonable cause to believe the person to have been hunting while under the influence of alcohol or a controlled substance.

(2)(A) The law enforcement agency by which the officer referred to in subdivision (c)(1) of this section is employed shall designate which

chemical tests authorized by this section shall be administered, and the law enforcement agency shall be responsible for paying all expenses incurred in conducting the chemical tests.

(B) If a person tested under this section requests that additional chemical tests be made as authorized in subsection (g) of this section, the cost of the additional chemical tests shall be charged to the person tested.

(C) If any person objects to the taking of his or her blood for a chemical test as authorized by this section, the breath, saliva, or urine of the person may be used for the chemical test.

(d)(1) To be considered valid under the provisions of this section, a chemical test of a person's blood, breath, saliva, or urine must be performed according to methods approved by the State Board of Health or by an individual possessing a valid permit issued by the Department of Health for that purpose.

(2) The department may:

(A) Approve satisfactory techniques or methods for the chemical test of a person's blood, breath, saliva, or urine;

(B) Ascertain the qualifications and competence of individuals to conduct the chemical test; and

(C) Issue permits that shall be subject to termination or revocation at the discretion of the department.

(e)(1) When a person submits to a blood test at the request of a law enforcement officer, blood may be drawn by a physician or by a person acting under the direction and supervision of a physician.

(2) The limitation of subdivision (e)(1) of this section shall not apply to the taking of breath, saliva, or urine specimens.

(3)(A) No person, institution, or office in this state that withdraws blood for the purpose of determining alcohol concentration or controlled substance content of the blood at the request of a law enforcement officer under this section shall be held liable for violating any of the criminal laws of this state in connection with the withdrawal of blood.

(B) A physician, institution, or person acting under the direction or supervision of a physician shall not be held liable in tort for the withdrawal of the blood unless the person or institution is negligent in connection with the withdrawal of blood or the blood is taken over the objections of the subject.

(f) Upon the request of a person who submits to a chemical test at the request of a law enforcement officer under this section, full information concerning the chemical test shall be made available to the person or the person's attorney.

(g)(1) A person tested may have a physician, qualified technician, registered nurse, or other qualified person of his or her own choice administer a complete chemical test in addition to any chemical test administered at the direction of a law enforcement officer.

(2) The law enforcement officer shall advise the person of this right.

(3) If a law enforcement officer refuses or fails to advise the person of this right and to permit and assist the person to obtain the chemical

test, then the results of the chemical test taken at the direction of the law enforcement officer under this section shall not be admissible into evidence.

History. Acts 2005, No. 1983, § 1; 2013, No. 361, § 19.

Amendments. The 2013 amendment inserted “saliva” throughout the section; substituted “chemical test” for “test” in (a)(2), (a)(3)(B), (c)(2)(C), (f), (g)(1) and (g)(3); substituted “chemical tests” for “tests” in (b)(2)(A) and (b)(2)(B); substituted “alcohol concentration” for “alcohol” in (a)(1), (a)(3)(A) and (e)(3)(A); inserted “law enforcement” preceding the second occurrence of “agency” in (c)(2)(A); substi-

tuted “charged to” for “borne by” in (c)(2)(B); substituted “for the chemical test” for “to make the analysis” in (c)(2)(C); substituted “a chemical test” for “chemical analyses” in (d)(1); substituted “may” for “is authorized to” in the introductory language of (d)(2); substituted “test” for “analysis” in (d)(2)(A); substituted “chemical analysis” for “test” in (d)(2)(B); and deleted “or tests” following “chemical test” twice in (f), and in (g)(3).

15-42-128. Lifetime hunting licenses and fishing licenses for resident disabled veterans.

(a) The General Assembly finds and determines that:

(1) The regulation of hunting and fishing, and the issuance of hunting licenses and fishing licenses, in the state is a primary responsibility of the Arkansas State Game and Fish Commission under Arkansas Constitution, Amendment 35;

(2) Disabled veterans of Arkansas deserve to be recognized and honored for their service and sacrifice in honorably serving the nation and this state;

(3) The establishment and issuance of lifetime hunting licenses and lifetime fishing licenses in this state is a small way to recognize and honor the service of disabled veterans in this state; and

(4) It is the purpose and intent of this section to authorize and encourage the commission to establish and issue lifetime hunting licenses and lifetime fishing licenses for eligible disabled veterans in this state.

(b) The commission may establish for issuance lifetime hunting and lifetime fishing licenses for eligible disabled veterans in this state.

(c) As used in this section, “disabled veteran” means a veteran who is a resident of the state and has either:

(1) Been determined by the United States Department of Veterans Affairs to be a one hundred percent (100%) totally and permanently disabled service-connected veteran; or

(2) Been determined by the department to be a permanently disabled service-connected veteran who is the recipient of the Purple Heart medal as a result of his or her service-connected disability.

(d) A disabled veteran may obtain a lifetime license to hunt or a lifetime license to fish under this section by:

(1) Applying to the Arkansas State Game and Fish Commission;

(2) Furnishing information required by the commission to verify eligibility; and

(3) Payment of the following fees:

(A) One dollar and fifty cents (\$1.50) for a lifetime hunting license; and

(B) One dollar and fifty cents (\$1.50) for a lifetime fishing license.

(e) A lifetime license to hunt or a lifetime license to fish issued under this section shall:

(1) Be in the same form and contain the same information as other hunting licenses or fishing licenses issued by the commission;

(2) Contain any other information required by the commission; and

(3) Be plainly stamped either:

(A) "DISABLED VETERAN"; or

(B) "DISABLED VETERAN — PURPLE HEART".

(f) The commission may promulgate such rules and regulations as necessary to carry out the intent of this section.

History. Acts 2013, No. 1253, § 4.

CHAPTER 47

WILDLIFE RECREATION FACILITIES

SUBCHAPTER.

1. WILDLIFE RECREATION FACILITIES PILOT PROGRAM.

SUBCHAPTER 1 — WILDLIFE RECREATION FACILITIES PILOT PROGRAM

SECTION.

15-47-104. Funding.

15-47-104. Funding.

(a)(1) The Arkansas State Game and Fish Commission voluntarily agrees to make available an amount not to exceed five hundred thousand dollars (\$500,000) for the fiscal year beginning July 1, 2011, and ending June 30, 2012, for the Wildlife Recreation Facilities Pilot Program for the development of wildlife recreation facilities under this subchapter from moneys that the commission has received from oil and gas leases in the Fayetteville Shale.

(2) The General Assembly recognizes that the agreement under subdivision (a)(1) of this section does not constitute:

(A) A mandate by the General Assembly;

(B) An appropriation of funds by the General Assembly; or

(C) A waiver or relinquishment by the commission of the authority vested in the commission under Arkansas Constitution, Amendment 35.

(3) Before any moneys are distributed under this section, the commission shall retain the right to approve or disapprove the release of moneys.

(4) Future funding for the program is subject to the review under subdivisions (b)(2) and (3) of this section and shall be determined by and distributed from the availability of royalties from oil and gas leases

in the Fayetteville Shale that the commission receives or from other sources that are not from the commission.

(b)(1) The Department of Rural Services and the commission agree to execute a memorandum of understanding to delineate each party's participation, obligation, and cooperation in the program sufficient to fulfill the requirements of this section.

(2) The department and the commission agree to review the memorandum of understanding every two (2) years to evaluate the effectiveness and success of the program and to reexamine the need for moneys to be made available to the department to fund the development of wildlife recreation facilities.

(3) If both the commission and the department agree that the program meets or exceeds the purpose of the legislation or agree that to discontinue the program would result in an undue disruption of progress, the parties shall reexecute a memorandum of understanding under subdivision (b)(1) of this section.

(c) An agreement for funding in a memorandum of understanding under subdivision (b)(1) of this section and a distribution of money under this subchapter require the final approval of the commission.

(d) The maximum grant amount for a single project funded under the program is one hundred thousand dollars (\$100,000) per year.

History. Acts 2009, No. 687, § 1; 2011, No. 1041, § 7.

Amendments. The 2011 amendment, in (a)(1), substituted "an amount not to exceed five hundred thousand dollars

(\$500,000)" for "one million dollars (\$1,000,000)," "fiscal year" for "fiscal bien-nium," "July 1, 2011" for "July 1, 2009," and "June 30, 2012" for "June 30, 2011."

SUBTITLE 5. MINERAL RESOURCES GENERALLY

CHAPTER 55

GENERAL PROVISIONS

SUBCHAPTER.

2. ARKANSAS GEOLOGICAL SURVEY.

SUBCHAPTER 2 — ARKANSAS GEOLOGICAL SURVEY

SECTION.

15-55-214. Transfer of the State Board of

Registration for Profes-sional Geologists.

Effective Dates. Acts 2013, No. 708, § 3: July 1, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this Act transfers the State Board of Registration for Professional Geologists to the Arkansas Geological Survey; that to

effectively administer this Act the transition should occur at the beginning of the next fiscal year; and that the effectiveness of the Act of July 1, 2013, is essential to the operation of the agencies. Therefore, an emergency is declared to exist and this Act being necessary for the preservation

of public peace, health and safety shall become effective on July 1, 2013.”

15-55-214. Transfer of the State Board of Registration for Professional Geologists.

(a)(1) Effective July 1, 2013, the State Board of Registration for Professional Geologists is transferred to the Arkansas Geological Survey and shall be administered by the Arkansas Geological Survey Director.

(2) All authority, powers, duties, functions, records, authorized positions, property, unexpended balances of appropriations, allocations, or other funds of the State Board of Registration for Professional Geologists are transferred to the Arkansas Geological Survey.

(b) In order to protect the State Board of Registration for Professional Geologists, to allow for continuation of necessary procedures, and to provide for a smooth transition to the Arkansas Geological Survey, the Arkansas Geological Survey Director may not realign the functions or records of the State Board of Registration for Professional Geologists before July 1, 2014.

History. Acts 2013, No. 708, § 2.

CHAPTER 56

MINERAL LANDS AND INTERESTS

SUBCHAPTER.

3. LEASES GENERALLY.

SUBCHAPTER 3 — LEASES GENERALLY

SECTION.

15-56-302. Summons — Validity of lessee's title.

15-56-302. Summons — Validity of lessee's title.

(a) Summons shall be issued and served as in other cases in circuit court.

(b) All persons, if any, whose names or whereabouts are stated in the petition to be unknown to the plaintiff shall be deemed and taken as defendants by the name or designation of “all whom it may concern”, and such persons may be constructively summoned, as provided by Rule 4 of the Arkansas Rules of Civil Procedure. However, the validity of the lessee's title under the lease, when approved by the court, shall not thereafter be subject to attack by any person whatsoever, including, but not limited to, nonresidents, minors, or other incompetents, except by direct appeal in the manner provided by law.

History. Acts 1937, No. 220, § 3; Pope's Dig., § 11197; Acts 1963, No. 85, § 3; A.S.A. 1947, § 52-203; Acts 2013, No. 1148, § 4.

Amendments. The 2013 amendment

substituted "circuit court" for "chancery" in (a); and substituted "by Rule 4 of the Arkansas Rules of Civil Procedure" for "in § 16-58-130" in (b).

CHAPTER 57

MINING AND RECLAMATION GENERALLY

SUBCHAPTER.

3. ARKANSAS OPEN-CUT LAND RECLAMATION ACT.

SUBCHAPTER 3 — ARKANSAS OPEN-CUT LAND RECLAMATION ACT

SECTION.

15-57-305. Civil and administrative penalties.

15-57-305. Civil and administrative penalties.

(a) **CIVIL PENALTIES.** The Arkansas Department of Environmental Quality is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(1) To restrain any violation of or to compel compliance with the provisions of this subchapter or of any order, rule, regulation, permit, or reclamation plan issued pursuant thereto;

(2) To accomplish remedial measures as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter, including the reclamation of affected land;

(3) To recover all costs, expenses, and damages to the department or any other agency of the state in enforcing the provisions of this subchapter and reclaiming affected land;

(4) To assess civil penalties for violations of this subchapter or of any order, rule, regulation, permit, or reclamation plan issued pursuant thereto in an amount not to exceed:

(A) One thousand dollars (\$1,000) for the first violation;

(B) Two thousand five hundred dollars (\$2,500) for a second separate violation of the same offense within two (2) years; and

(C) Five thousand dollars (\$5,000) for a third separate or subsequent violation of the same offense within two (2) years;

(5) To recover civil penalties assessed pursuant to subsections (b) and (c) of this section; or

(6) To forfeit a reclamation bond.

(b) **ADMINISTRATIVE PENALTIES.**

(1) Any person who engages in open-cut mining without first securing a permit as required by this subchapter or who fails to reclaim affected lands in accordance with this subchapter or who violates any provision of this or any order, regulation, rule, permit, or reclamation plan issued pursuant thereto, may be assessed an administrative civil penalty by the department not to exceed:

(A) One thousand dollars (\$1,000) for the first violation;

(B) Two thousand five hundred dollars (\$2,500) for a second separate violation of the same offense within two (2) years; and

(C) Five thousand dollars (\$5,000) for a third separate or subsequent violation of the same offense within two (2) years.

(2) No administrative civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing and has exhausted all administrative appellate remedies.

(3) The amount of the administrative civil penalty shall be determined in accordance with regulations adopted by the Arkansas Pollution Control and Ecology Commission, including, but not limited to, the regulations on civil penalties.

(c) All hearings and appeals arising under this subchapter shall be conducted in accordance with the procedures described in §§ 8-4-218 — 8-4-229 and in accordance with regulations adopted by the commission, including, but not limited to, the regulations on administrative procedures.

(d) As an alternative to the limits on civil or administrative penalties under subsection (a) or subsection (b) of this section, if a person who is found liable in an action brought under subsection (a) or subsection (b) of this section has derived pecuniary gain from the commission of mining without a permit or mining outside of the area authorized in the permit, then the person may be ordered to pay a civil penalty equal to the amount of the pecuniary gain.

History. Acts 1991, No. 827, § 4; 1999, No. 1526, § 3; 2001, No. 550, § 1; 2011, No. 609, § 1. **Amendments.** The 2011 amendment added (d).

CHAPTER 58

THE ARKANSAS SURFACE COAL MINING AND RECLAMATION ACT

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ADMINISTRATION.
4. STATE ABANDONED MINE RECLAMATION PROGRAM.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 15-58-102. Legislative findings.
15-58-106. Exempt activities.

15-58-102. Legislative findings.

The General Assembly of the State of Arkansas finds, and it is declared that:

(1)(A) The extraction of coal from the earth by surface mining in this state is a significant economic activity, is an integral part of the growth and development of this state, and is important to supply energy to the people of this state.

(B) It is, therefore, essential to the people of this state to ensure the existence of an expanding and economically healthy surface and underground coal mining industry;

(2) The process of surface coal mining must be accomplished in a manner to reduce so far as practicable the adverse social, economic, and environmental effects of surface mining and to protect the general welfare, health, safety, and property rights of the people of this state;

(3) Because surface coal mining in this state takes place in areas where the terrain, climate, biological, chemical, and other physical conditions are peculiar to this state and because the Arkansas Department of Environmental Quality is familiar with these conditions, the department has the primary responsibility to develop, issue, and enforce regulations for surface mining and reclamation operations in this state pursuant to this chapter and in compliance with applicable federal laws and regulations;

(4)(A) The Congress of the United States has enacted the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, which provides for the establishment of a nationwide program to regulate surface coal mining and reclamation and which vests exclusive authority in the Department of the Interior over the regulation of surface coal mining and reclamation within the United States. Section 503 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, provides that each state may assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state by obtaining approval of a state program of regulation that demonstrates that the state has the capability of carrying out the provisions and meeting the purposes of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87.

(B) Section 503 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, further provides that a state wishing to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state must have a state law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87; and

(5)(A) The Congress of the United States has enacted the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, which provides for the establishment of a nationwide program to promote reclamation of mined areas in the country left without adequate reclamation to be funded by a reclamation fee paid by all surface coal mining operators. Section 402 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, provides that

each state may develop a state abandoned mine reclamation program to enable the state to develop and carry out projects for the reclamation of abandoned mines within the state.

(B) The Secretary of the Interior will allocate funds to this state under the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, for the purpose of operating the state abandoned mine reclamation program.

(C) Section 405 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, provides that, prior to approval of the state abandoned mine reclamation plan, the state must have adopted state legislation necessary to carry out the purposes of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87.

History. Acts 1979, No. 134, § 2; A.S.A. 1947, § 52-936; Acts 1999, No. 1164, § 142; 2011, No. 279, § 1.

subdivided (1) and (4); subdivided (5) as (5)(A) and (C) and inserted (5)(B); and deleted the last sentence in (5)(A).

Amendments. The 2011 amendment

15-58-106. Exempt activities.

This chapter does not apply to any of the following activities:

(1)(A) The mining, surface or otherwise, of any minerals or materials other than coal.

(B) All minerals and materials other than coal, when applicable, shall be regulated according to the Arkansas Open-Cut Land Reclamation Act of 1977 (repealed) or the Arkansas Quarry Operation, Reclamation, and Safe Closure Act, § 15-57-401 et seq.;

(2) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her;

(3) The extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the Arkansas Pollution Control and Ecology Commission; or

(4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16 2/3%) of the tonnage of minerals removed for purposes of commercial use or sale or for coal exploration.

History. Acts 1979, No. 134, § 34; A.S.A. 1947, § 52-968; Acts 2011, No. 279, § 2.

subdivided (1) as (1)(A) and (B); and added “or the Arkansas Quarry Operation, Reclamation, and Safe Closure Act, § 15-57-401 et seq.” in (1)(B).

Amendments. The 2011 amendment

SUBCHAPTER 2 — ADMINISTRATION

SECTION.	SECTION.
15-58-204. Adoption of rules and regulations.	15-58-207. Public hearing — Procedures.
	15-58-208. Public hearing — Examiners.

15-58-204. Adoption of rules and regulations.

(a) Before the adoption, amendment, or repeal of any rule or regulation, the Arkansas Pollution Control and Ecology Commission shall give public notice and the opportunity for a public hearing under §§ 15-58-207 and 15-58-208.

(b)(1) If the commission finds that imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than twenty (20) days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to adopt an emergency rule or regulation.

(2) The rule or regulation may be effective for no longer than one hundred eighty (180) days.

(c)(1) A person has the right to petition for the issuance, amendment, or repeal of any rule or regulation.

(2) Within ninety (90) days after submission of a petition, the commission either shall deny the petition, stating in writing its reasons for the denial, or shall initiate rulemaking proceedings in accordance with subsection (a) of this section.

(d)(1) The commission shall file with the Secretary of State a certified copy of each rule or regulation adopted by it.

(2) The Secretary of State shall keep a permanent register of the rule or regulation open to public inspection.

(3)(A) Each rule or regulation shall be effective twenty (20) days after filing, unless a later date is specified by law or in the rule or regulation itself.

(B) However, an emergency rule or regulation may become effective immediately upon filing or at a stated time less than twenty (20) days after filing if the commission finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.

(C) The commission's finding and a brief statement of the reasons shall be filed with the rule or regulation.

(D) The commission shall take appropriate measures to make emergency rules or regulations known to the persons who may be affected by them.

(e) A rule or regulation shall not be valid unless adopted and filed in substantial compliance with this chapter.

History. Acts 1979, No. 134, § 27; A.S.A. 1947, § 52-961; Acts 2011, No. 279, § 3.

Amendments. The 2011 amendment deleted "legislative" preceding "public hearing" in (a); subdivided (b) as (b)(1) and (2); substituted "one hundred eighty (180) days" for "one hundred twenty (120)

days" in (b)(2); subdivided (c) as (c)(1) and (2); substituted "the commission" for "the agency" in (c)(2); subdivided (d) as (d)(1) through (d)(3); deleted "the Governor and" following "shall file with" in (d)(1); and substituted "commission" for "agency" or variant in (d)(3)(B) through (d)(3)(D).

15-58-207. Public hearing — Procedures.

(a) The Director of the Arkansas Department of Environmental Quality or the Arkansas Pollution Control and Ecology Commission shall give public notice of each of the following pending, proposed, or requested actions:

(1) The director, upon receipt of any completed application for an initial or revised permit or renewal under §§ 15-58-502 — 15-58-508;

(2) The director, upon receipt of any request by an operator for a variance or amendment to an issued permit under §§ 15-58-502 — 15-58-508;

(3) The commission, upon receipt of any proposal for the designation of lands as unsuitable for surface mining under § 15-58-501;

(4) The commission, upon receipt of any proposal for the use of land acquired pursuant to the state abandoned mine reclamation program; or

(5) The commission, in any rulemaking proceeding under § 15-58-204.

(b) Notice shall be circulated in accordance with the regulations issued by the commission to inform interested and potentially interested persons of the pending action.

(c)(1) Interested persons shall be afforded a period of not less than thirty (30) days after the last publication of the above notice to submit written objections or comments.

(2) Comments and objections shall be immediately transmitted to the applicant or permittee and shall be made available to the public.

(3) If a public hearing is requested by an interested person on or before ten (10) days of receipt of the objections and in accordance with the regulations issued by the commission, public notice shall be given in accordance with the regulations issued by the commission.

(4) A public hearing shall be held for the purpose of receiving relevant evidence.

(d) Any person shall be permitted to submit oral or written statements concerning the subject matter of the public hearing, to call witnesses who may present oral statements, and to present recommendations as to an appropriate decision.

(e)(1) An electronic or stenographic record shall be made of the hearing, unless waived by all parties.

(2) All written statements and similar data offered in evidence, subject to exclusion by the examiner for reasons of redundancy, shall be received in evidence and shall constitute part of the record.

(f) If a public hearing is held under this section, the director or the commission shall grant or deny, in whole or in part, the requested or proposed action and shall give public notice of its decision within sixty (60) days of the hearing.

(g)(1) If there has been no public hearing held pursuant to this section, the director or the commission shall grant or deny, in whole or in part, the requested or proposed action within a reasonable time and in accordance with regulations issued by the commission.

(2) Parties shall be notified by mail with a copy of the decision.

(3) Public notice shall be given of the decision in accordance with the regulations issued by the commission.

(h) Within thirty (30) days of the public notice of the final decision of the director or the commission, any person with an interest which is or may be adversely affected may request review of the reasons for the final determination of the director or the commission in accordance with this chapter.

History. Acts 1979, No. 134, § 28; A.S.A. 1947, § 52-962; Acts 2011, No. 279, § 4.

Amendments. The 2011 amendment substituted "Public" for "Legislative" in the section heading; substituted "public"

for "legislative" in (c)(3), (c)(4), (f) and (g)(1); subdivided former (c) as (c)(1) through (c)(4); subdivided former (e) as (e)(1) and (2); substituted "hearing" for "conference" in (f); and subdivided former (g) as (g)(1) through (3).

15-58-208. Public hearing — Examiners.

(a) For the purpose of receiving and responding to written comments and objections and for presiding at a public hearing, the Arkansas Pollution Control and Ecology Commission or the Director of the Arkansas Department of Environmental Quality may designate one (1) or more examiners.

(b) An examiner may:

(1)(A) Set the time and location of the public hearing.

(B) Public notice of the information shall be circulated in accordance with regulations issued by the commission;

(2) Receive all information submitted pursuant to the pending action and permit or deny cross-examination of witnesses;

(3) Recommend denial or approval, in whole or in part, of the proposed or requested action;

(4) Maintain order at the public hearing;

(5) Generally guide the course of the public hearing; and

(6) Arrange with the applicant, upon request of any party, access to the mining area for the purpose of gathering information relevant to the proceeding.

History. Acts 1979, No. 134, § 28; A.S.A. 1947, § 52-962; Acts 2011, No. 279, § 5.

substituted "Public" for "Legislative" in the section heading; deleted "legislative" preceding "public hearing" in (a); and subdivided (b)(1).

Amendments. The 2011 amendment

SUBCHAPTER 4 — STATE ABANDONED MINE RECLAMATION PROGRAM

SECTION.

15-58-402. State priorities.

15-58-404. Abatement of adverse effects

— Lien.

15-58-402. State priorities.

Expenditure of moneys from the fund on lands and water eligible under § 15-58-401 for the purposes of this chapter shall reflect the following priorities in the order stated:

(1) "Priority I" includes the protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(A) Have been degraded by the adverse effects of coal mining practices; and

(B) Are adjacent to a site that has been or will be addressed to protect public health, safety, and property from extreme danger of adverse effects of coal mining practices;

(2) "Priority II" includes the protection of public health and safety from adverse effects of coal mining practices, including restoration of land and water resources and the environment that:

(A) Have been degraded by the adverse effects of coal mining practices; and

(B) Are adjacent to a site that has been or will be addressed to protect the public health and safety from the adverse effects of coal mining practices; and

(3)(A) "Priority III" includes the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water, excluding channelization, woodland, fish and wildlife, recreational resources, and agricultural productivity.

(B) Priority III land and water resources that are geographically contiguous with existing or remediated Priority I or Priority II problems shall be considered adjacent under the definitions of Priority I or Priority II above.

(C) If the state receives any funding under 30 CFR § 872.14, 30 CFR § 872.17, or 30 CFR § 872.21, then the state may expend these funds to reclaim Priority III lands and waters if either of the following conditions applies:

(i) Facilitating the Priority I or Priority II reclamation; or

(ii) Providing reasonable savings towards the objective of reclaiming all Priority III land and water problems within the state's jurisdiction.

History. Acts 1979, No. 134, § 7; A.S.A. 1947, § 52-941; Acts 2011, No. 279, § 6.

Amendments. The 2011 amendment rewrote the section.

15-58-404. Abatement of adverse effects — Lien.

(a) The Director of the Arkansas Department of Environmental Quality or his or her authorized representative, under the state abandoned mine reclamation program, shall make a finding of fact that:

(1) Land or water resources have been adversely affected by past coal mining practices; and

(2) The adverse effects are at a state in which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(3)(A) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known or readily available; or

(B) The owners will not give permission for the state or political subdivisions of the state or their agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(b)(1) If the director determines that the conditions listed in subsection (a) of this section exist, the director or his or her authorized representative upon giving notice by mail to the owners, if known, or if not known, by posting notice upon the premises and advertising one (1) time in a newspaper of general circulation in the county in which the land lies, may enter upon the property adversely affected by past coal mining practice and any other property to have access to the property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent adverse effects.

(2) The entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon.

(3)(A) The moneys expended for the work and the benefits accruing to any premises so entered upon shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry.

(B) Subdivision (b)(3)(A) of this section does not create a new right of action or eliminate existing immunities.

(c)(1) A lien exists against the property so reclaimed under this section if the moneys expended for reclamation result in a significant increase in property value.

(2)(A) The lien under subdivision (c)(1) of this section is effective upon the filing by the director of a notice of lien with the circuit clerk of the county in which the land is located and in accordance with the regulations issued by the Arkansas Pollution Control and Ecology Commission.

(B) However, the notice shall constitute a lien upon the land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

(d)(1) The lien obtained under this section shall not exceed the amount determined by an independent appraisal to be the increase in the market value of the land as a result of the reclamation undertaken.

(2) The commission by regulations shall establish procedures for determining the amount of the lien.

(3) The landowner or any parties aggrieved by the decision determining the amount of the lien may request an adjudicatory hearing before the commission under §§ 15-58-209 — 15-58-211.

(e) No lien shall be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to, participated in, nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

History. Acts 1979, No. 134, § 9; A.S.A. 1947, § 52-943; Acts 2011, No. 279, § 7.

A.C.R.C. Notes. Acts 2011, No. 279, § 7 omitted the previous subsection (d) — the omission was apparently inadvertent. The previous subsection (d) has been set out as subsection (e).

Amendments. The 2011 amendment,

subdivided and redesignated the section; added “If the director determines that the conditions listed in subsection (a) of this section exist” in (b)(1); inserted “under this section” in (c)(1); and inserted “under subdivision (c)(1) of this section” in (c)(2)(A).

SUBTITLE 6. OIL, GAS, AND BRINE

CHAPTER 71

OIL AND GAS COMMISSION

SECTION.

15-71-117. Fees — Exploration and production fluid transportation

tion system — Natural gas pipeline system operator.

A.C.R.C. Notes. Acts 2013, No. 121, § 7, provided: “FAYETTEVILLE SHALE QUARTERLY REPORTING. The Arkansas Oil and Gas Commission shall report on a quarterly basis to the Arkansas Legislative Council or the Joint Budget Committee the number of inspections and any hearings, findings, orders, fines, or other agency regulatory or enforcement actions

or activities involving the Fayetteville Shale. The quarterly reports shall be provided no later than the 15th day of the month immediately following the end of each quarter.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

15-71-111. Procedural rules, regulations, or orders — Hearing.

CASE NOTES

Failure to Comply with Rules.

Issuance of a commercial disposal well permit was made upon unlawful procedure and was thus subject to reversal under § 25-15-212(h)(3) because the Ar-

kansas Oil and Gas Commission failed to comply with its own rules pursuant to subdivision (a)(3) of this section when it did not require timely proof of financial assurance under Ark. Oil & Gas Comm’n

Rule H-1. Capstone Oilfield Disposal of Ark., Inc. v. Pope County, 2012 Ark. App. 231, — S.W.3d — (2012).

15-71-115. Abandoned and Orphaned Well Plugging Fund.

A.C.R.C. Notes. Acts 2013, No. 121, § 6, provided: “FUND TRANSFER. The Oil and Gas Commission, after receiving review from the Chief Fiscal Officer of the State and the Legislative Council, may request the Chief Fiscal Officer to transfer

up to \$2,000,000 per year on his or her books and the books of the State Treasurer and the Auditor of the State from the Oil and Gas Commission Fund to the Abandoned and Orphaned Well Plugging Fund.”

15-71-117. Fees — Exploration and production fluid transportation system — Natural gas pipeline system operator.

(a) Each application submitted by an operator of an exploration and production fluid transportation system equipped for carrying or pulling a transportation tank as defined by the Oil and Gas Commission’s General Rules and Regulations Rule E-3 shall be accompanied by an application fee for each transportation tank as determined by the Oil and Gas Commission in an amount not to exceed one hundred dollars (\$100).

(b) Each application by a pipeline operator to construct or operate a jurisdictional pipeline system as defined by the Oil and Gas Commission’s General Rules and Regulations Rule D-17 shall be accompanied by a permit fee as determined by the commission in an amount not to exceed five thousand dollars (\$5,000).

(c)(1) Each application for a hearing shall be accompanied by a fee as determined by the commission in an amount up to two dollars (\$2.00) for each person whose address is provided by the applicant and the applicant has identified in the application or requested to receive a copy of the order from the hearing under the Oil and Gas Commission’s General Rules and Regulations Rule A-2(a)(5).

(2) Subdivision (c)(1) of this section shall not apply to an application filed by the commission.

(d) The fees collected under subsections (a), (b), and (c) of this section are cash funds of the commission to use in any manner permissible under law.

History. Acts 2013, No. 1466, § 1.

CHAPTER 72

OIL AND GAS PRODUCTION AND CONSERVATION

SUBCHAPTER.

- 1. GENERAL PROVISIONS.**
- 2. WELLS AND DRILLING GENERALLY.**
- 3. POOLS AND DRILLING UNITS.**

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

15-72-103. Penalty.

15-72-103. Penalty.

(a)(1)(A) A person who violates this subchapter or a rule, regulation, or order of the Oil and Gas Commission made under this subchapter, in the event a penalty for the violation is not otherwise provided for in this subchapter, is subject to a penalty not to exceed two thousand five hundred dollars (\$2,500) a day for each day of violation and for each violation.

(B) A person who transports a liquid or other substance and violates a rule, regulation, or order of the commission by dumping or disposing of the liquid or other substance improperly or without authorization at a well or well site is subject to a penalty not to exceed one hundred thousand dollars (\$100,000) for each violation.

(2)(A) If the penalty is not recovered by the commission within the time frame specified by the commission, the penalty may be recovered in a suit in the circuit court of the county where the defendant resides in the county of the residence of any defendant if there is more than one (1) defendant, or in the circuit court of the county where the violation took place.

(B) The place of suit shall be selected by the commission.

(3) The suit, by direction of the commission, shall be instituted and conducted in the name of the commission by the attorney for the commission or by the Attorney General or under his or her direction by the prosecuting attorney of the county where the suit is instituted.

(b) The payment of any penalty as provided for in this section shall not have the effect of changing illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product, nor shall the payment have the effect of authorizing the sale, purchase, acquisition, transportation, refining, processing, or handling in any other way of such illegal oil, illegal gas, or illegal product, but to the contrary, penalty shall be imposed for each prohibited transaction relating to the illegal oil, illegal gas, or illegal product.

(c) Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this state relating to the conservation of oil or gas, or the violation of any provision of this act, or any rule, regulation, or order made thereunder shall be subject to the same penalties as are prescribed herein for the violation by the other person.

History. Acts 1939, No. 105, § 22; 1981, No. 523, § 5; A.S.A. 1947, § 53-122; Acts 2007, No. 859, § 3; 2013, No. 1262, § 1.

Amendments. The 2013 amendment redesignated former (a)(1) as (a)(1)(A), and rewrote present (a)(1)(A); and added (a)(1)(B).

SUBCHAPTER 2 — WELLS AND DRILLING GENERALLY

SECTION.

15-72-203. Prerequisite to exploring or

drilling — Notice to surface owner.

15-72-203. Prerequisite to exploring or drilling — Notice to surface owner.

(a) Before entering upon a site for the purpose of exploration or for oil or gas drilling, except in instances where there are nonresident surface owners, nonresident surface tenants, unknown heirs, imperfect titles, or surface owners or surface tenants whose whereabouts cannot be ascertained with reasonable diligence, the operator shall give to the surface owner written notice of his or her intent of exploration or undertaking drilling operations on premises owned by the surface owner. The notice shall contain the proposed location and the approximate date that the operator proposes to commence exploration or drilling operations.

(b) The notice shall be given in writing by certified United States mail, or personally, to the surface owner at the address of the surface owner as is reflected in the records of the tax collector of the county in which the lands are located.

(c)(1)(A) As used in this subsection, “shale operations” means drilling activities relating to the production of gas and other petroleum hydrocarbons directed at an unconventional shale gas formation in a county listed in Oil and Gas Commission Rule B-43(c) or (d) if entry upon the surface owner’s surface estate is required and the drilling activities are conducted on or after August 16, 2013.

(B) “Shale operations” does not include:

(i) The periodic inspection, maintenance, or repair of completion activities;

(ii) Preparatory activities such as inspection, surveying, or staking; or

(iii) Drilling additional wells, redrilling, or recompletion operations on an existing drilling pad if the operator does not expand the existing pad.

(2) The Oil and Gas Commission shall promulgate rules, regulations, and orders consistent with this section to require an operator intending to conduct shale operations to provide a single enhanced written notice as described in subdivision (c)(3) of this section in lieu of the written notice required under subsection (a) of this section.

(3) The rules, regulations, and orders of the commission shall require the enhanced written notice to:

(A) Describe:

(i) The proposed shale operations; and

(ii) The location of the proposed well and the pad location, including the section, township, range, and plat of the pad location, if available;

(B) Be given to the surface owner at least fourteen (14) days before the operator proposes to begin shale operations on the surface owner's property;

(C) Contain a statement that the operator has a pending or approved drilling permit for the proposed shale operations on the surface owner's property and that the permit shall be available for inspection by the surface owner on request by the surface owner;

(D) Contain the name, address, telephone number, fax number, and electronic mailing address of the operator or the operator's agent; and

(E) Be sent by certified United States mail or delivered personally to the surface owner at the address of the surface owner stated in the public records of the county collector of the county in which the surface owner's property is located.

(4) After written notice of the operator's intent to begin shale operations is given under this subsection, an operator is not required to give any other notice to begin, conduct, or complete shale operations on the surface owner's property.

(5) Written notice under this subsection is:

(A) Presumed delivered three (3) days after mailing by certified mail;

(B) Effective immediately upon hand delivery;

(C) Not required for emergency situations in which the shale operations are required to protect the public health and safety or the environment; and

(D) Not required if a surface owner has a contractual relationship with an operator that specifies when or how the operator shall give notice regarding the beginning of shale operations.

(6) After receipt of a written notice of the operator's intent to begin shale operations under this subsection, the surface owner shall not make alterations to a proposed drilling location to interfere with the shale operations for which the surface owner received the notice.

(d) This section does not supersede, modify, or supplant the notice provisions of Rule B-42 of the commission.

History. Acts 1983, No. 902, § 2; A.S.A. 1947, § 53-217; Acts 2013, No. 1299, § 2.

A.C.R.C. Notes. Acts 2013, No. 1299, § 1, provided:

"Title.

"This act shall be known and may be cited as the 'Landowner Notification Act'."

Amendments. The 2013 amendment added (c) and (d).

SUBCHAPTER 3 — POOLS AND DRILLING UNITS

SECTION.

15-72-305. Allocation of production and

cost following integration order — Procedure.

15-72-304. Integration orders generally.**CASE NOTES****Reasonable Compensation.**

This section does not require the Arkansas Oil and Gas Commission to award the highest bonus historically paid when unleased mineral owners are directed to transfer their rights in a drilling unit and the product from the unit well to the parties who elect to participate therein; it requires only reasonable consideration and a reasonable basis. *Walls v. Ark. Oil & Gas Comm'n*, 2012 Ark. 418, — S.W.3d —, 2012 Ark. LEXIS 439 (Nov. 8, 2012).

Decision of the Arkansas Oil and Gas Commission that the owners' compensation be at a rate of \$ 500 per net mineral

acre and a one-eighth royalty was supported by substantial evidence as: (1) this section did not require the Commission to award the highest bonus historically paid; (2) this section required only reasonable consideration and a reasonable basis; and (3) there was evidence that the corporation had about 265 acres under lease and that the best terms paid were \$ 800 and a one-sixth royalty, \$ 500 and a one-eighth royalty, and \$ 225 and a three-sixteenths royalty. *Walls v. Ark. Oil & Gas Comm'n*, 2012 Ark. 418, — S.W.3d —, 2012 Ark. LEXIS 439 (Nov. 8, 2012).

15-72-305. Allocation of production and cost following integration order — Procedure.

(a)(1) The order of the Oil and Gas Commission creating a drilling unit shall provide that effective as of the commencement of the drilling of a well upon the drilling unit or, if a well capable of producing oil and gas in commercial quantities has already been completed upon some part of the lands included within the drilling unit, all royalty, overriding royalty, production payment, or similar interests in the drilling unit shall be integrated without the necessity of any additional order or action by the commission or owners. In the event any unit includes an unleased mineral interest upon the effective date thereof, one-eighth ($\frac{1}{8}$) of the unleased mineral interest shall be deemed as royalty for the purposes of this subsection.

(2) For the purpose of making distribution to the owners of royalty, overriding royalty, production payment, or similar interests, there shall be allocated to each tract in the established drilling unit that percentage of the total production from such drilling unit, except any part thereof unavoidably lost or used for production or development purposes, which the area of each tract bears to the total area of the drilling unit. The interests shall be paid or delivered to each owner thereof in conformance with the provisions of the appropriate lease, agreement, or contract creating it, but computed upon the production allocated to each tract as hereinabove provided, rather than upon the actual production therefrom.

(3) One-eighth ($\frac{1}{8}$) of all gas sold on or after the first day of the calendar month next ensuing after March 6, 1985, from any such unit shall be considered royalty gas, and the net proceeds received from the sale thereof shall be distributed to the owners of the marketable title in and to the leasehold royalty and royalty as defined under § 15-72-304(d). Marketability of title shall be determined according to principles of real property law governing title to oil and gas interests.

Unless all royalty owners within the drilling unit agree to a different method for distribution of the royalty, the distribution shall be coordinated by the operator of the well as follows:

(A)(i) Within thirty (30) days of the receipt of the proceeds from gas sale, each working interest owner shall furnish to the working interest owner designated as operator, in a form acceptable to the operator, the following information:

(a) The names and addresses of all owners of royalty under the working interest owner's leasehold interests;

(b) Each royalty owner's tax identification or social security number and any other information needed to meet the requirements of the Internal Revenue Service or other governmental agencies; and

(c) The fractional or decimal interests in the unit of each tract in which interests are owned and each royalty owner's fractional or decimal interest therein;

(ii) Thereafter, each working interest owner shall notify the operator of any changes of ownership and provide the necessary information to facilitate the necessary changes promptly upon receiving proof thereof;

(iii) If any working interest owner should fail or refuse to discharge its obligation to provide the information outlined in subdivision (a)(3)(A)(i) in a timely manner, to facilitate payments, the operator may, at its option, either:

(a) Notify the working interest owner by certified or registered mail of the name, address, and decimal interests of the royalty owner believed to be entitled to receive payments pursuant to the terms hereof under the working interest owner's leasehold on the basis of the best information then available to the operator. If the working interest owner fails to respond to the notification within thirty (30) days of the receipt thereof, the operator shall be entitled to pay royalty moneys in accordance with its prior notification and usual procedures. Further, the operator's payment in this manner shall constitute a complete defense to any claim or in any legal proceeding or cause of action and the responsible working interest owner shall indemnify and hold the operator harmless from all liability and reimburse the operator for any and all costs and expenses, including attorney's fees, interest, or penalty incurred with respect to the proceeding or action; or

(b) File an application with the commission, setting forth sufficient facts to identify the well concerned and the responsible working interest owner, requesting that the commission issue an order requiring the working interest owner to appear at the next regularly scheduled hearing and show cause with respect to its failure to timely comply with the provisions of this section. Subsequent to the hearing, the commission shall impose upon a working interest owner who has failed to meet its obligations hereunder such sanctions as are reasonably calculated to enforce compliance with this section. These sanctions shall include, but not be limited to, a penalty under

§ 15-74-709. The commission shall have the authority to suspend the imposition of any sanction for a maximum period of sixty (60) days in order to allow the noncompliant owner the opportunity to furnish proof to the commission of his or her compliance with any commission order. All penalties levied by the commission as a result of this provision shall be collected by the commission and shall be deposited in the State Treasury to the credit of the Oil and Gas Commission Fund. The commission may promulgate such other rules and regulations as it deems appropriate and necessary to carry out the purposes of this section;

(iv) The terms of subdivision (a)(3)(A) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons;

(B)(i) Commencing no later than six (6) months after the date of first sale, and thereafter no later than the earlier of thirty (30) days after first payment is received or thirty (30) days after the sixty-day period within which the first purchaser is to make payment pursuant to §§ 15-74-501 and 15-74-601 — 15-74-603, or a total of ninety (90) days after the end of the calendar month within which subsequent production is sold, each working interest owner or marketing party who has sold gas shall remit or cause to be remitted to the operator one-eighth ($\frac{1}{8}$) of the revenue realized or royalty moneys from gas sales computed at the mouth of the well, less all lawful deductions, including, but not limited to, all federal and state taxes levied upon the production or proceeds and shall indemnify and hold the other working interest owner free from any liability therefor. However, if any portion of the price received by a marketing party is subject to possible refund to the gas purchaser pursuant to the regulations or orders of any governmental authority, the refundable portion need not be included in the amount remitted to the operator for distribution hereunder until the possibility of refund has terminated. The funds or amounts as so remitted shall be held in trust by the operator for the account of the royalty owner or owners entitled thereto until distributed and paid as provided in this section;

(ii) If any operator should fail or refuse to discharge its obligation to remit revenues in a timely manner as provided in this section, the working interest owner whose royalty owner's obligations have not been paid may, to facilitate payment, either:

(a) File an application with the commission, setting forth sufficient facts to identify the well concerned and the responsible operator, requesting that the commission issue an order requiring the operator to appear at the next regularly scheduled hearing and show cause with respect to its failure to timely comply with the provisions of this section. Subsequent to the hearing, the commission shall impose upon an operator who has failed to meet its obligations hereunder such sanctions as are reasonably calculated to enforce compliance

with this section. The sanctions shall include, but not be limited to, a penalty under § 15-74-709. The commission shall have the authority to suspend the imposition of any sanction for a maximum period of sixty (60) days in order to allow the noncompliant the opportunity to furnish proof to the commission of his or her compliance with any commission order. All civil penalties levied by the commission as a result of this provision shall be collected by the commission and deposited in the State Treasury to the credit of the fund. The commission may promulgate such other rules and regulations as it deems appropriate and necessary to carry out the purposes of this section; or

(b) File a legal proceeding or cause of action to compel the operator's compliance with the terms hereof. The operator shall reimburse the complaining working interest owner for any and all costs or expenses, including attorney's fees, incurred with respect to the proceeding or action;

(iii) The operator shall not be held liable for failure to distribute royalty hereunder where its failure is due to the failure of a working interest owner to timely provide or cause to be provided the information and royalty moneys described in subdivisions (a)(3)(A) and (B) of this section. Each working interest owner shall indemnify and hold the operator harmless for all costs, including reasonable attorney's fees, incurred as a result of the failure;

(iv) The terms of subdivision (a)(3)(B) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(4)(A) Any working interest owner may arrange for the royalty moneys to be remitted directly to the operator by the purchaser to whom the gas is sold but, in that case, shall continue to hold the operator harmless for all costs, including reasonable attorney's fees, incurred as a result of failure to provide or cause to be provided the information and royalty moneys required by subdivisions (a)(3)(A) and (B) of this section.

(B) The terms of subdivision (a)(4) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(5)(A) On or before the thirtieth day of the next calendar month following its receipt of the royalty moneys as provided above, the operator shall distribute the moneys by check or by any form of electronic funds transfer to all royalty owners as provided in this subsection. The distribution may be made annually for the aggregate of up to twelve (12) months of accumulated royalty moneys where the aggregate amount due any royalty owner is at least ten dollars (\$10.00), but less than one hundred fifty dollars (\$150). However,

upon written request by the royalty owner, the payment shall be made when the aggregate amount exceeds fifty dollars (\$50.00). Accumulated amounts of less than ten dollars (\$10.00) may be held but shall be paid when production ceases or by the payor of payment upon relinquishing responsibility. With respect to each such distribution, the operator shall provide the following to the royalty owner in paper form or make accessible in electronic form:

- (i) The name of the party entitled to payment;
- (ii) Identification of the wells for which payment is being made by well number or division order;
- (iii) The time period for which payment is made;
- (iv) The decimal interest of the party being paid;
- (v) The total production from each well for which payment is being made;
- (vi) The gross price received for each unit of production from each well;
- (vii) Any and all deductions from the payment which shall be itemized as to the nature of the deduction; and
- (viii) An address and telephone number at which additional information may be obtained and questions may be answered.

(B) In the event that the operator stops the royalty payments for a period of more than sixty (60) days for any reason, the operator shall send a letter of explanation.

(C) If a royalty interest owner requests information or answers to questions concerning a payment made pursuant to this subdivision and the request is made by certified mail with return receipt requested, the party making payment must respond to the request by certified mail with return receipt requested not later than forty-five (45) days after the request is received.

(D)(i) If a royalty interest owner fails to receive an answer to his or her request for information or to his or her questions, the royalty interest owner may file a complaint with the commission on a form provided by the commission describing:

- (a) The information requested or the questions to be answered;
- (b) The party responsible for making the royalty payments;
- (c) The date the information or answers were requested; and
- (d) The date the requested information or answers were due from the paying party.

(ii) Upon the filing of the complaint form, the commission shall issue an order requiring the party making the payments to appear at the next regularly scheduled hearing and to show cause for its failure to respond to the royalty interest owner's request for information or answers.

(iii) If the party making the payments fails to respond to the royalty interest owner's inquiry after the complaint is filed or fails to show just cause for its failure to respond at the hearing, the commission shall impose such sanctions as are reasonably calculated to enforce compliance with this provision.

(iv) These sanctions shall include, but not be limited to, a civil penalty of up to, but not more than, five hundred dollars (\$500). The commission shall have the authority to suspend the imposition of any sanction for a maximum period of sixty (60) days in order to allow the noncompliant party the opportunity to furnish proof to the commission of his or her compliance with any commission order.

(v) All civil penalties levied by the commission as a result of this provision shall be collected by the commission and shall be deposited in the State Treasury to the credit of the fund.

(E) The commission may promulgate such other rules and regulations as it deems appropriate and necessary to carry out the purposes of this section.

(F) The terms of this subdivision (a)(5) shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(6)(A) Payment of one-eighth ($\frac{1}{8}$) of the revenue realized from the sale of gas as provided in this section shall fully discharge all obligations of the operator and other working interest owners with respect to the payment of one-eighth ($\frac{1}{8}$) leasehold royalty or royalty as described under § 15-72-304(d).

(B) The terms of this subdivision (a)(6) shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(7)(A) The operator shall be entitled to reimbursement from each working interest owner, whether or not that party is marketing gas, the party's fair and equitable share of the costs of distributing the one-eighth ($\frac{1}{8}$) royalty required by this subsection. The amount of these charges shall be based upon the reasonable cost of administering these provisions and shall be subject to review by the commission upon application of any working interest owner.

(B) The terms of subdivision (a)(7) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(8)(A) Any gas taken in kind shall be excluded from royalty gas for which payment shall be made pursuant to this section, but the operator shall be promptly provided with written notification of the intent to exclude the gas.

(B) Additionally, any gas taken by a working interest owner to correct an imbalance in production between the working interest owners, which was created or existed prior to April 1, 1985, shall also be excluded from royalty gas for which payment shall be made pursuant to this subsection.

(C) Nothing contained in this section shall affect the obligations of working interest owners with respect to the payment of royalties,

overriding royalties, production payments, or similar interests in excess of the one-eighth ($\frac{1}{8}$) royalty required to be distributed under this section.

(b) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of a drilling unit for which an integration order has been entered shall be deemed for all purposes the conduct of operations upon each separately owned tract and interest in the drilling unit by the several owners thereof. The portion of the production allocated to the owner of each tract or interest included in a drilling unit formed by an integration order shall, when produced, be considered for all purposes as if it had been produced from the tract or interest by a well drilled thereon.

History. Acts 1939, No. 105, § 15; 1963, No. 536, § 1; 1985, No. 272, § 1; A.S.A. 1947, § 53-115; Acts 1987, No. 94, §§ 1, 4; 2009, No. 1175, § 16; 2013, No. 1062, §§ 1-3.

Amendments. The 2013 amendment, in (a)(3)(A)(iii)(b), substituted “a penalty under § 15-74-709” for “a civil penalty of

up to, but not more than, five hundred dollars (\$500)” in the third sentence and deleted “civil” preceding “penalties” in the fourth sentence; in (a)(3)(B)(ii)(a), substituted “under § 15-74-709” for “of up to, but not more than, five hundred dollars (\$500)” in the third sentence; and rewrote (a)(3)(5)(A).

CHAPTER 73

OIL AND GAS LEASES AND LEASE INTERESTS

SUBCHAPTER.

2. LEASES GENERALLY.

4. PARTITION OF OIL AND GAS LEASE INTERESTS.

SUBCHAPTER 2 — LEASES GENERALLY

SECTION.

15-73-201. Lease extended by production — Scope.

15-73-201. Lease extended by production — Scope.

(a)(1) The term of an oil and gas, or oil or gas, lease extended by activities on lands in one (1) section or pooling unit, whether established by rule or by order of the Oil and Gas Commission or the lease, shall not be extended to sections or pooling units under the lease where there has been no activity.

(2) Subsection (a) of this section does not prevent the parties to the lease from agreeing to a continuous drilling provision in order to extend the lease term to additional lands drilled or included in another section or unit if the lessor's waiver of the right to terminate the lease to the additional lands, sections, or units where no activity has occurred before the expiration of the lease is fully set forth in the lease or another agreement in bold, enlarged, or other distinctive print.

(b) After the primary term of a lease in an uncontrolled oil field with no spacing requirements, a producing well shall contain a maximum of one (1) governmental quarter-quarter section as a production unit.

History. Acts 1983, No. 330, §§ 1-3; A.S.A. 1947, §§ 53-321 — 53-323; Acts 2011, No. 857, § 1.

Amendments. The 2011 amendment rewrote the section.

CASE NOTES

In General.

Pursuant to subsection (b) of this section, as a lessee commenced drilling operations on the leased premises within a year of the expiration of the primary term, subsection (a) of this section did not apply to sever the producing section from non-

producing units; therefore, the lessors' request to nullify the lease was properly denied. *Snowden v. JRE Invs.*, 2010 Ark. 276, 370 S.W.3d 215 (2010).

Cited: *Southwestern Energy Prod. Co. v. Elkins*, 2010 Ark. 481, — S.W.3d — (2010).

15-73-204. Notice to lessee to release forfeited lease — Damages for failure to release.

CASE NOTES

Equitable Relief.

As lessors suit the lessee, alleging it violated § 5-37-226 and this section, and attacking the validity of the lease, they could not thereafter complain that the lessee failed to fulfill its lease obligations.

Therefore, the lessee's was entitled to equitable relief by being allowed to suspend its drilling obligations while the suit was pending. *Snowden v. JRE Invs.*, 2010 Ark. 276, 370 S.W.3d 215 (2010).

SUBCHAPTER 4 — PARTITION OF OIL AND GAS LEASE INTERESTS

SECTION.

15-73-403. Service of summons.

15-73-403. Service of summons.

Summons shall be issued and served as in other cases in circuit court and if any defendant shall be a nonresident of the state, or his or her whereabouts unknown to the plaintiff, such person may be constructively summoned, as provided by Rule 4 of the Arkansas Rules of Civil Procedure.

History. Acts 1935, No. 15, § 3; Pope's Dig., § 10551; A.S.A. 1947, § 53-403; Acts 2013, No. 1148, § 5.

substituted "by Rule 4 of the Arkansas Rules of Civil Procedure" for "in § 16-58-130" in the first paragraph.

Amendments. The 2013 amendment

CHAPTER 74**MEASUREMENT, INSPECTION, AND SALE OF OIL AND GAS**

SUBCHAPTER.

6. PROCEEDS OF SALE GENERALLY.**SUBCHAPTER 6 — PROCEEDS OF SALE GENERALLY**

SECTION.

15-74-601. Time limits governing oil and gas payments.**15-74-601. Time limits governing oil and gas payments.**

(a) The proceeds derived from the sale of oil or gas production from any oil or gas well shall be paid to persons legally entitled thereto, commencing no later than six (6) months after the date of first sale and thereafter no later than sixty (60) days after the end of the calendar month within which subsequent production is sold or as provided for under subdivision (b)(2) of this section.

(b)(1) The payment of proceeds under subsection (a) of this section is to be made to persons entitled thereto by the first purchasers of the production.

(2) The payment may be made annually for the aggregate of up to twelve (12) months of accumulation of proceeds if the aggregate amount owed is at least ten dollars (\$10.00), but less than one hundred fifty dollars (\$150), provided, upon written request by the royalty owner, the payment shall be made when the aggregate amount exceeds fifty dollars (\$50.00). Accumulated amounts of less than ten dollars (\$10.00) may be held but shall be paid when production ceases or by the payor of the payment upon relinquishing responsibility.

(c) As used in this subchapter, "first purchaser" means the first commercial purchaser after completion of the well and shall not include purchasers of oil or gas during initial testing prior to completion.

(d) Any delay in determining the persons legally entitled to an interest in the proceeds from production caused by unmarketable title to the interest shall not affect payments to persons whose title is marketable.

(e) When payment has not been made within the time limits specified in this subchapter, the first purchaser shall pay interest to those legally entitled to the withheld proceeds commencing on the payment due date at the rate of twelve percent (12%) per annum on the nonpaid amounts unless a different rate of interest is specified in a written agreement between the payor and the payee.

(f) The first purchaser shall be exempt from the provisions of this subchapter, and the owner of the right to drill and to produce under an oil and gas lease or force pooling order shall be substituted for the first purchaser therein when the owner and purchaser have entered into

arrangements in which the proceeds are paid by the purchaser to the owner, who assumes the responsibility of paying the proceeds to persons legally entitled thereto.

(g) Moneys paid by the payor under this section may be paid by either check or any form of electronic funds transferred to the persons legally entitled to the moneys under § 15-72-305.

History. Acts 1981, No. 269, § 1; 1983, No. 448, § 1; A.S.A. 1947, § 53-525; Acts 2003, No. 276, § 1; 2013, No. 1062, §§ 4, 5.

added “or as provided for under subdivision (b)(2) of this section” in (a); inserted “of proceeds under subsection (a) of this section” in (b)(1), rewrote (b)(2); and added (g).

Amendments. The 2013 amendment

CHAPTER 75

LIQUEFIED PETROLEUM GASES

SUBCHAPTER.

2. LIQUEFIED PETROLEUM GAS BOARD.

SUBCHAPTER 2 — LIQUEFIED PETROLEUM GAS BOARD

SECTION.

15-75-202. Meetings.

15-75-202. Meetings.

(a) The Liquefied Petroleum Gas Board shall adopt and may modify rules for the conduct of its business and shall keep a record of its transactions.

(b) Meetings shall be at the call of the chair or of the vice chair if he or she is for any reason the acting chair, either at his or her own instance or upon the written request of at least four (4) members.

(c) A quorum shall consist of not less than four (4) members present at any regular or special meeting, and a majority affirmative vote of that number shall be necessary for the disposition of any business.

(d) No meeting shall be for a longer period of time than is absolutely necessary to transact the business of the board.

(e) The board may meet one (1) time each calendar quarter, but no more than one (1) meeting shall be held during a sixty-day period for which a member is to receive compensation or reimbursement of expenses incurred.

History. Acts 1965, No. 31, §§ 8, 9; A.S.A. 1947, §§ 53-707, 53-708; Acts 1999, No. 1577, § 2; 2013, No. 327, § 1.

Amendments. The 2013 amendment substituted “may meet one (1) time” for “shall meet at least once in” in (e).

CHAPTER 76

BRINE

SUBCHAPTER.

3. BRINE PRODUCTION.

SUBCHAPTER 3 — BRINE PRODUCTION

SECTION.

15-76-315. Valuation of brine.

15-76-306. Authority of the commission.

CASE NOTES

Construction.

Reading the Brine Production Act, § 15-76-301 et seq., with the Administrative Procedures Act, § 25-15-212(g), it appeared that the correct procedure for the circuit court to follow was to limit its review to the record and allow the parties to introduce evidence only for the purpose of showing the Arkansas Oil and Gas Commission's order was invalid or unrea-

sonable; the Brine Production Act does not allow a de novo review of orders issued by the Commission, but permits additional evidence relating to procedural irregularities before the Commission or where there was good reason for failure to present that evidence to the Commission. *Great Lakes Chem. Corp. v. Bruner*, 368 Ark. 74, 243 S.W.3d 285 (2006).

15-76-315. Valuation of brine.

(a)(1)(A) The value of brine during any given year with respect to any unit established hereunder and for all purposes hereof shall be deemed to be the average price at which the operator of the unit has purchased or sold brine in Arkansas adjusted to reflect concentrations of ions, temperature, other relevant physical and chemical specifications, and delivery point.

(B) However, for purposes of this subchapter, the value shall not apply to any unit created hereunder until there shall have been actual bona fide sales or purchases of brine by the operator in sufficient volumes and under such circumstances as would establish a bona fide market value for brine from that unit.

(2) In any action by any owner against the operator of the unit for an appropriate accounting for royalty, the burden of proof that the value as determined hereunder constitutes a fair and reasonable market value of brine produced from the unit shall be upon the operator of the unit.

(3) However, no valuation of brine or any other alternate method of computing royalty or in lieu of royalty shall ever result in compensation which is less than thirty-two dollars (\$32.00) per acre per year, as increased or decreased annually based on changes in the Producer Price Index for Intermediate Materials, Supplies and Components published by the United States Department of Labor, Bureau of Labor Statistics, or its successor.

(4)(A) The adjustment will be made effective as of June 1 of each year and will remain effective for payments made from June 1 of that year until May 31 of the following year.

(B) The adjustment made each year will be based on the change in the index from December of the previous year relative to the base index of March, 1995.

(C) The formula to make the adjustment is as follows:

New in-lieu royalty payment = Base in-lieu royalty payment multiplied times A divided by B

Where:

(i) Base in-lieu royalty payment = \$32.00 per acre;

(ii) A = Index for the month of December prior to the year the adjustment is made. The index is the Producer Price Index for Intermediate Materials, Supplies and Components as published by the United States Department of Labor, Bureau of Labor Statistics, in Producer Price Indexes Table 2 for selected commodity groupings;

(iii) B = The March, 1995, Producer Price Index for Intermediate Materials, Supplies and Components as published by the United States Department of Labor, Bureau of Labor Statistics, in Producer Price Indexes Table 2 for selected commodity groupings.

(D)(i) The base price in lieu of royalty payment of thirty-two dollars (\$32.00) per acre will remain effective from April 1, 1995, until May 31, 1996.

(ii) The first adjustment to the base payment will be made effective as of June 1, 1996, and will remain effective for the following year until May 31, 1997.

(iii) Successive adjustments will be made effective as of June 1 each year thereafter and shall remain in effect until May 31 of the following year.

(b)(1) In the event that, during a given year, an operator makes no sales or purchases of brine qualifying for use under subsection (a) of this section, the value of brine for that year for brine produced by the operator from a particular unit for all purposes hereof shall be determined by the Oil and Gas Commission by multiplying the number of acres in that particular unit by eight (8) times the weighted average of lease compensation per acre or other in lieu of royalty payment agreed to between the producer thereof and the owners of brine interests in that unit, divided by the total production of brine in barrels for the given year.

(2)(A) If there are no sales or purchases of brine for two (2) or more consecutive years, the value of brine for each consecutive year after the first year in which there are no such sales shall be the value initially determined above, increased or decreased annually using the Producer Price Index for Intermediate Materials, Supplies and Components published by the United States Department of Labor, Bureau of Labor Statistics, in Producer Price Indexes Table 2 for selected commodity groupings.

(B) The adjustment will be made prior to June 1 and the new price per acre will be effective on June 1 of each year using the value of the

index for the previous December based on the change in the index from March, 1995, to the previous December.

(C) The formula to make the adjustment is as set forth in subdivision (a)(4)(C) of this section.

(3) For purposes of calculating the value of the royalty interest under § 15-76-314(e), the value of brine as initially determined and as increased or decreased under this subsection shall not be less than the value of brine as initially determined under this subsection by utilizing an average annual lease compensation or payment in lieu of royalty equivalent to thirty-two dollars (\$32.00) per acre.

(c)(1) In addition to any other amounts due and owing by the producer or producers of any unit to the owners therein, the producer or producers shall account separately and on a fair and equitable basis to each owner in the unit for all substances which are found by the commission to be profitably extracted from brine by a producer and which were not extracted by a producer on January 1, 1979.

(2) Whether or not any such substance is extracted profitably shall be determined by the Oil and Gas Commission on the basis of the value at the time of extraction, without interest, after deducting all costs of producing and recovering the same.

(3)(A) Except as provided in subdivision (c)(3)(B) of this section, the accounting by the producer shall be on a quarterly basis and shall be accompanied by payments due to royalty owners. The producer's responsibility for making royalty payments shall commence upon the occurrence of either of the two (2) following events:

- (i) The date of filing of a petition for an accounting; or
- (ii) The time of the profitable extraction of other substances.

(B) The accounting and corresponding royalty payments may be made on an annual basis for the aggregate of up to four (4) quarters of accumulated royalties if the aggregate amount owed to a royalty owner is one hundred dollars (\$100) or less.

History. Acts 1979, No. 937, § 8; A.S.A. 1947, § 53-1308; Acts 1995, No. 1287, § 1; 2011, No. 169, § 1.

Amendments. The 2011 amendment rewrote (c)(3).

